



IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

NO. 78-668

GEORGE RAYMOND DIPP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY

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COMES NOW the Petitioner, GEORGE RAYMOND DIPP, by and through his undersigned counsel, and makes the following reply to the United States' brief in opposition to the granting of a Writ of Certiorari herein.

I.

GOVERNMENT AGENT FINEFROCK'S TESTIMONY AT THE CONSPIRACY TRIAL WAS DELIBERATELY FALSE AND MISLEADING.

The Court is respectfully requested to examine verbatim excerpts of Finefrock's testimony as the conspiracy trial and at the perjury trial set forth in the margin below. This testimony demonstrates that Finefrock was a highly intelligent and court-wise witness and government agent who debased the forum at the conspiracy trial by concealing his true role as an active agent, and the existence of a tape-recording of statements of the Defendant incriminating him in drug-smuggling activity.

THE CONSPIRACY TRIAL

CROSS-EXAMINATION BY MR. CLAIBORNE:

Q Mr. Finefrock, let's find out something about you, sir. Where do you say you are from?

A My home is 206 South Hill Street, Hobart, Oklahoma.

Q Hobart, Oklahoma. Now, just how did these Government agents find out you were sitting in a truck down in El Paso, Texas, and had a conversation with Mr. Dipp, and that you were in a motel called the Desert Hills Motel in El Paso, Texas, and you had a conversation with him?

A How did they find out about it, sir?

Q Yes. Would you just tell us how they got that information?

A They asked me my association with Mr. Dipp, and I told them. (Tr. 163)

Q ***When did you make some startling revelation about Mr. Dipp to the Federal agents? Exactly what point in your prosecution?

THE CONSPIRACY TRIAL (continued)

A November the 20th, 1975.

Q ***And to whom did you make that statement?

A Special Agent Jim Johns and Special Agent Dennis Cameron in the Special Task Force offices in Reno, Nevada.

Q And where were you at that time you were interviewed?

A The Special Task Force offices in Reno, Nevada. (TR, 164)

Q ***Now, exactly when was it then that you were contacted by Mr. Cameron and the other agents?

A Approximately four or five days before the 20th of November, 1975 (TR, 165)

Q And where did they contact you?

A I believe they contacted me at my home.

Q In Oklahoma?

A Yes, sir.

Q And then interrogated you and asked you questions, I take it, about a lot of people?

A They asked me if I would be willing to come to Reno, Nevada, and asked me questions about Mr. Dipp. (TR, 166)

Q Now, can you tell me why, if you will, please, why you haven't been sentenced before now?

A I don't know why I haven't been sentenced before now, except for the fact that we were working on a number of deals over in the Jackson, Mississippi area and Homer, Louisiana, area with the Jackson office.

Q In other words, you became, or were already a government agent; is that correct?

A No, sir. You cannot become—you cannot be or you cannot be a government agent when you are under indictment. (TR, 185)

Q Now, at the time that you went down to El Paso to talk to George Dipp, did any agency of the Federal Government know your intentions?

A To talk to George Dipp?

THE CONSPIRACY TRIAL (continued)

Q Yes.

A About what, sir?

Q On any of those occasions where you talked to him.

A Any agent of the Federal Government know that I was in El Paso?

Q And that you were going to talk to George Dipp.

A I told them I was going to El Paso. Under my bond, (Tr, 187) I had to let them know anyplace I was going.

Q Did they send you there in February of 1976?

A They have never sent me anywhere, sir. (Tr, 188)

THE PERJURY TRIAL

CROSS-EXAMINATION BY MR. CLAIBORNE:

Q Now, were you advised by the Government that Mr. Dipp maintained that his conversations with you were about mining property and a quarry that you had in Oklahoma?

A Was I advised by the Government about that, sir?

Q Yes.

A I read his testimony from the trial.

Q Now, who would furnish you a copy of the testimony of his trial? Would you please tell me that, sir?

A I specifically asked for it.

Q Oh, you specifically asked for it?

A I asked for the testimony.

Q And at what point in time did you specifically ask for Mr. Dipp's testimony in the last trial?

A I can't recall the date, but it was shortly after the trial.

Q Shortly after the trial. Were you upset because the jury did not believe you and acquitted Mr. Dipp?

A It was a far-fetched decision.

(Tr. 152)

Q Now, what is significant to me today, Mr. Finefrock, is this: While you testified before that you had conferred with Mr. Cameron, and that you had worked with the Mississippi authorities in the DEA on the Colombian, South American deal, you did not tell us about — and you testified before about your Jetmore, Oklahoma transaction with Mr.

THE PERJURY TRIAL (continued)

Dipp, and those (Tr, 156) transactions that you had with Hanksville, Utah and Colorado, but you didn't happen to mention before this matter that you have mentioned today about in December 15, or 15 and 16 of that year. Is there any reason why before you didn't mention this matter?

A You didn't ask me.

Q Well, I didn't ask you about the Colombian South American matter, either, until you mentioned it. I asked what cases you had worked on for the DEA.

Q You asked me what I had done for the people down there in Mississippi. I think you will find that your questions in the record were directed in that tone.

Q I presume you have checked that, too, have you?

A I have, sir.

Q So you thought that when I was asking you the questions about what you did for the DEA that I should have asked you about specific months, like on December the 15th or 16th (Tr, 157)

A I directed my answers to your questions, sir.

Q Uh-huh. Now, was this business with the DEA, where you met Mr. Baden down there, and you agreed to wear a KEL set and agreed to go and engage Mr. Dipp in conversation, if you did so, was all that a part of your deal with the DEA to help yourself in the Mississippi matter?

A The Mississippi group never knew of the work I was doing or any of the loads that I had been flying with Mr. Dipp until approximately two days before I came out here to meet with Mr. Baden.

Q Is Mr. Baden from this office in Nevada?

A No, sjr, in El Paso.

Q ***So, I mean, your first connection then with the DEA was in Mississippi, and then without the (Tr, 158) Mississippi agents of the DEA knowing anything about it, you hooked up with Mr. Baden on the Texas investigation, and without Mr. Baden knowing anything about your investigative work, you hooked up an investigation with Mr. Cameron; is that what you are telling me?

A I will be happy to straighten you out. I was first indicted by the Mississippi courts. And in view of our knowledge of the South American

THE PERJURY TRIAL (continued)

operation, the Mississippi courts and Drug Enforcement Administration, through me bargaining with our attorneys, agreed that we would be given a probationary sentence if we would furnish them with certain information about the South American operation***

At the time I came to El Paso to meet with Mr. Baden, I specifically came because I had made a call to the Jackson, Mississippi office of the Drug Enforcement Administration and talked to either Mr. Tom Dial or Mr. Dick (159) Boyles. They called El Paso and advised them that I was coming out here. They called me back and gave me a phone number to call when I got to El Paso. *** (Tr, 160)

A I did not come out here without any of the other agencies knowing about my activities. The Oklahoma office was well informed of my activities, the Houston office was well informed of my activities. Anything we had done and worked with the Jackson, Mississippi office, they knew exactly what we were working on. *** (Tr, 160)

Q So you were being utilized then by DEA in any area where they felt that you had knowledge and you could be useful as an informant? (Tr, 161)

A That is correct.

Q Now, who suggested to you that you meet with George Dipp and have a conversation with him in December 15 and 16?

A Nobody suggested it. I came forth with the action. *** (Tr, 162)

Q *** Now, at what point did you first discuss engaging Mr. Dipp in conversation with Mr. Baden, or anybody who is a supervisor in the DEA office in El Paso?

A I discussed this at first with either Mr. Boyles or Mr. Dial of the Jackson, Mississippi office within one or two days prior to coming out here on the 15th or 16th of December, 1975.

Q When you say come out here on the 15th or 16th, you mean El Paso?

A Excuse me, I stand corrected; El Paso is what I am referring to.

Q Did you advise them that you had some information that you wanted to impart to them, and if you went to El Paso, Texas, you might set up something that would be extremely helpful to them?

A I did. I did, sir.

THE PERJURY TRIAL (continued)

Q Yes. And of course, then when you got to El Paso they arranged for this conference and you engaged him in conversation? (Tr, 163)

A That is correct, sir.

Q And that machine that you told us about putting on, that KEL machine, that was to get some kind of a recording that would have some kind of incriminating statement from Mr. Dipp?

A That is correct.

Q And so it could be used in evidence against Mr. Dipp at some future time?

A That is correct.

Q So then you knew at the time that you went and talked with George Dipp that you were engaging in conversation for the sole purpose of getting him to say something incriminating which might take his freedom from him or send him to jail; is that correct?

A That is about correct.

Q And do you think your freedom is worth causing somebody else that much grief or trouble?

A There was also a matter of some \$40,000 besides my freedom.

Q I see. In other words, you have a hatred for George Dipp, as well as helping yourself, that you were appeasing in this matter; is that correct? (Tr, 164)

A I have a dislike for a gentleman that tells the people working with him that he is an honorable and upright businessman and pays his debts and will pay them, and makes no effort to pay them.

Q And you claim he owes you money, and because he owes you money, I mean, that is one of the motivating factors in which you did this; is that what you are telling me?

A That is correct. *** (Tr, 165)

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The agent Finefrock simply cannot be characterized as a witness who entertained a reasonable doubt or confusion about whether he was a mere "informant," as opposed to being an active agent for the government.

The testimony further reveals that DEA agents and offices in Mississippi, Oklahoma and Texas were all well informed of Finefrock's activities. Also, DEA Agent Cameron of Reno, Nevada, was on notice of the possible existence of recorded statements of the Defendant, and Jencks Act material on the witness Finefrock. Agent Cameron's neglect to pursue the inquiry, and the inconsistencies between his affidavits and courtroom testimony (brought out in Judge Hufstedler's specially concurring opinion), and his non-disclosure to the Court at the conspiracy trial that he had tried unsuccessfully to obtain the tape recordings, all speak of a witting failure on Cameron's part to discover and disclose Defendant's statements and required Jencks Act material as to the witness Finefrock.

The Jencks Act (18 U.S.C. §3500) is not some prophylactic rule, applicable only to prosecutors, in the nature of a canon of court-room ethics. It is a Congressional enactment which requires the production of material by the United States. The existence of this statute is a major support of the federal trial as a truth-seeking institution. The instant conviction is a product of a violation of the Jencks Act.

II.

THE PROSECUTION AVAILED ITSELF OF A TRIAL DEBASED BY A GOVERNMENT AGENT'S FALSE AND MISLEADING TESTIMONY AS THE FOUNDATION FOR A PROSECUTION FOR PERJURY.

Petitioner has not changed his position throughout this case. His position is that his counsel was entitled to Jencks Act material; that the obligation to provide Jencks Act material extends to the "government" that the "government" did not produce the Jencks Act material; that an agent of the government, Finefrock, who was on the witness stand when the Jencks Act material was requested, concealed his status as a government agent, falsely testified that the "government" had never sent him anywhere; and falsely represented that the only reason any DEA agents knew he was in El Paso when he talked to petitioner was because he was required to let the government know where he was under the conditions of his bond.

Petitioner contends that his counsel at the conspiracy trial was entitled to Jencks Act material and that this obligation existed whether or not the jury convicted or acquitted petitioner at the conspiracy trial, because government disclosure of this information is vital to the right of counsel and to the integrity of the federal courtroom.

Petitioner agrees that no showing has been made that Assistant United States Attorney Pike, who prosecuted the case, knew of Finefrock's role or his duplicity on the witness stand at the conspiracy trial. Petitioner does assert, however, and continuously has asserted that DEA Agent Cameron had information which put him on notice of the grave misinformation in Finefrock's testimony at the conspiracy trial. Petitioner further asserts that even if Finefrock had misinformed DEA Agent Cameron, still, DEA agents clear across the country were completely informed about Finefrock's activities, and DEA Agent Cameron was under an obligation to determine with accuracy whether Jencks Act material existed.

Is it not prosecutorial misconduct to reap the harvest of the

duplicity of a government agent?

Certainly, the trial of criminal prosecutions in federal court will be marked by a disastrous chilling effect if government is not forthcoming about its possession of highly incriminating statements of a Defendant. Can it be conceived that DEA Agent Baden, for example, could have taken the witness stand and concealed the existence of the tape recording of the meeting between Dipp and Finefrock? The government made Finefrock its agent as surely as it made Mr. Baden an agent of the DEA. Is the government under no obligation to assure that *all* its agents will tell the truth, and the whole truth, in court?

To the extent that a reversal of the petitioner's conviction will be to his benefit, he will receive that benefit solely because the integrity of the federal courts must be preserved against the duplicity of those who are turned into government agents.

Respectfully Submitted,

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